

No. 9242

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit 7

WEST COAST LIFE INSURANCE COMPANY (a corporation), PACIFIC NATIONAL BANK OF SAN FRANCISCO (a national banking association), et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT,

Appellee.

SUPPLEMENTAL CITATIONS IN SUPPORT OF
PLEA OF RES JUDICATA.

(Filed by appellants pursuant to permission at hearing of cause, and containing particular reference to the case of Chicot Drainage District v. Baxter State Bank.)

CHAS. L. CHILDERS,
Bank of America Building,
El Centro, California.

PETER TUM SUDEN,
605 Market Street,
San Francisco, California.

HUGH K. McKEVITT,
Russ Building,
San Francisco, California.

DAVID FREIDENRICH,
Stock Exchange Building,
San Francisco, California.

CLARK, NICHOLS & ELTSE,
GEORGE CLARK,
American Trust Company Building,
Berkeley, California.

HERMAN PHLEGER,
BROBECK, PHLEGER & HARRISON,
Crocker Building,
San Francisco, California.

CHASE, BARNES & CHASE,
LUCIUS F. CHASE,
Title Insurance Building,
Los Angeles, California.

W. COBURN COOK,
Berg Building,
Turlock, California.

*Appearing respectively for various Appellants
as shown on cover of original brief.*



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The following case, decided January 2, 1940, cites the case of *Stoll v. Gottlieb* discussed in the separate opening brief on the issue of *res judicata*. It determines a point directly contrary to the finding of the United States District Court in this cause. It establishes that, if in the prior proceeding under Section 80 we had obtained merely the judgment of the District Court against the power of Congress to change the bonds under the bankruptcy clause of the Consti-

tution and under a grant of powers such as are in Section 80, the decree would have been *res judicata*, although in a later case the Supreme Court held the section void. The prior decree of the District Court in the case referred to was rendered under old Section 80. It readjusted the bonded indebtedness of a drainage district located in Arkansas. The decree was not appealed from. After the decision in the *Ashton* case, a bank holding certain of the bonds which had been readjusted brought suit to enforce them and attacked collaterally the District Court judgment which had been pleaded as *res judicata*, claiming that on the face of the record it was void. This bank had appeared in the proceeding under Section 80 but it obviously had not accepted the benefit of the judgment. The Circuit Court of Appeals upheld the contention of the bank that the judgment under Section 80 was void. But the Supreme Court of the United States ruled that such judgment concluded the parties appearing as to the question of the constitutionality of the grant of bankruptcy power that had been made by Section 80 to the United States District Court, and that the decree of said Court was binding on the bank.

Chicot Drainage District v. Baxter State Bank,
Advance Sheets 84 L. ed. 277 (decided Jan.
2, 1940).

The converse of this would be true and the following finding of the District Court here is clearly erroneous.

“The Court finds that said proceeding so dismissed was based upon a law wholly null and void and which conferred no jurisdiction upon

the court and that there was no judgment on the merits in said proceeding. This court finds that the proceeding now before this court is based upon an entirely different law and one which does confer jurisdiction upon the court, and that petitioner herein is not barred in this proceeding by *res adjudicata* or otherwise."

(R. 217.)

Neither the prior judgment of the Circuit Court of Appeals nor the directed decree of dismissal entered by the District Court was void and the finding should have been that the contracts involved *were construed* by a prior judgment wherein it was held (a) that Congress was powerless to grant authority to the District Court to make changes in the contracts because of their public character and (b) that, because of the contract clause of the constitution, the objection was not waivable through state consent. It should have been held that the judgment went on the ground the agency was invalid and not for defect in plan.

And the Court should note that the case of *United States v. Bekins* does not hold that state consent is not necessary to the operation of Section 83, which we say is invalid because it employs the same condemned federal agency, the United States District Court, for the purpose of putting into effect the plan.

The judgments pleaded in support of *res judicata* were made in the face of the following finding which was made by the District Court on the entry of the decree which was appealed from and reversed.

"That said plan of Readjustment does not, nor does any order or decree of this court in this proceeding, or otherwise, interfere with (a) any of

the political or governmental powers of petitioner, or (b) any of the property or revenues of petitioner necessary for essential governmental purposes, or (c) any income producing property, except to the extent that said Plan of Readjustment so provides. That no changes or modifications have been made in said Plan of Readjustment and that no changes or modifications are necessary or desirable.”

(See the prior findings at page 246 of the Transcript of the prior proceeding. This Transcript is Exhibit “OO”. Copies of the Exhibit were filed in lieu of printing.)

The same finding is made here through the finding and the decree that the plan complies with new Section 83. Each section contains a provision setting out the limitations on power which required the making of the quoted finding in the first cause.

Clearly the said case of *Chicot Drainage District v. Baxter State Bank* shows the doctrine of *res judicata* applies to questions of law resulting in construction of contracts and affixes finality and permanency to rights resulting from such construction.

The following case was a suit by a bank to enjoin the collection of taxes which various political subdivisions in the State of Kentucky were attempting to levy under a law passed in 1932. In its complaint, the bank pleaded generally the invalidity of the taxes and further that as to certain defendants the bank’s exemption from the taxes attempted to be levied had been previously adjudicated. The State Court judgment went generally for the defendants. The bank claimed impairment of its contract rights and appealed to the

United States Supreme Court. The record showed that in prior litigation involving taxes of earlier years a final judgment had been rendered for the bank and against part of the defendants, sustaining the contention of the bank that its charter and its acceptance of a certain Kentucky statute constituted a contract and that the proper construction of this contract meant that the bank's property was immune from taxes. The defendants affected by the prior judgment obviously claimed that the prior judgment could have no effect upon taxes levied in later years or under the later statute enacted in 1932. That is the argument generally made against a judgment to the effect a corporate charter makes corporate property exempt from taxation. But when the judgment goes on a ground that is general, it is settled that it controls and determines the invalidity of taxes levied in later years or under different statutes. On the appeal by the bank in the case referred to, the Supreme Court of the United States held that the ruling as to the existence of the contract and as to the construction to be placed upon it was, as between the parties to the prior litigation, binding and determined that the later taxes were invalid. It held that, on the basis of a prior decision, the Supreme Court of Kentucky had properly ruled in other litigation that there was in fact no contract of exemption at all. It accordingly reversed the judgment appealed from as to those taxing agencies which were parties to the prior cause and affirmed the judgment as to the remaining defendants. While the case does not as does the case of *New Orleans v. Citizens State Bank*, quoted from at page 7 of the opening brief on the issue of *res judicata*, give the

reason underlying the ruling, it is obviously based on the proposition that when the construction of a contract is litigated and a *right* under it that is general is adjudicated, the judgment resting on such construction is conclusive when the contract is before the Court in a second suit between the same parties and the *same right* is claimed or relied on. The prior determination made the bank's property exempt from taxes levied by the defendants which were parties to the prior cause.

Stone v. Bank of Commerce, 174 U. S. 409, 43 L. ed. 1027.

Dated, January 29, 1940.

CHAS. L. CHILDERS,
 HUGH K. McKEVITT,
 CLARK, NICHOLS & ELTSE,
 GEORGE CLARK,
 CHASE, BARNES & CHASE,
 LUCIUS F. CHASE,
 PETER TUM SUDEN,
 DAVID FREIDENRICH,
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